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REMARKS

The Office Action dated 8 December 2005 has been reviewed, and the comments of the U.S. Patent Office have been considered. Claims 1-36 remain as originally filed; however claims 15-36 stand withdrawn from consideration. Thus, claims 1-14 are respectfully submitted for consideration by the Examiner.

Submitted concurrently herewith are nine corrected drawing sheets, each labeled "Replacement Sheet," removing the suggestion that ten drawing sheets exist. No new matter has been added. It is respectfully submitted that the objection to the drawings should be withdrawn.

Claims 1-14 were provisionally rejected under 35 U.S.C. § 101 as allegedly claiming the same invention as that of claims 1-14, respectively, in co-pending U.S. Application No. 10/758,239. And claims 1-4 and 9 were rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by U.S. Patent No. 5,263,462 to Reddy. These rejections are respectfully traversed in view of the following comments.

With regard to the rejection under 35 U.S.C. § 101, claim 1 of co-pending U.S. Application No. 10/758,239 recites a method of fuel vapor management including, *inter alia*, "locating a pressure and temperature sensor upstream of a canister." No such feature is recited in respective independent claim 1 of the present invention.

Section 804 of the Manual of Patent Examining Procedure (MPEP) states that "[i]n determining whether a statutory basis for a double patenting rejection exists, the question to be asked is: Is the same invention being claimed twice?" And defines "same invention" as meaning "identical subject matter." According to MPEP § 804, "[a] reliable test for double patenting under 35 U.S.C. 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent." It is respectfully submitted that, for example, an infringing device that does not include a pressure and temperature sensor located upstream of a canister could literally infringe Applicant's claim 1 without literally infringing respective claim 1 of U.S. Application No. 10/758,239. As such, it is respectfully submitted that the alleged rejection under 35 U.S.C. § 101 fails the test, and that the rejection should be withdrawn.

With regard to the rejection under 35 U.S.C. § 102(b), independent claim 1 recites a method of fuel vapor management including, *inter alia*, "when the engine is not running,

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performing a leak detection diagnostic" and "when the engine is running, performing a purge valve diagnostic." Support for this combination of features may be found in Applicant's specification as originally filed at, for example, paragraph 0073.

In contrast, Reddy's Figures 1 and 3 show purge solenoid valves 19 and 81, respectively, but Reddy is absolutely silent as to any diagnostic being performed on the purge solenoid valves 19 or 81. Thus, it is respectfully submitted that Reddy fails to teach or suggest Applicant's method of fuel vapor management, as recited in independent claim 1, and that the rejection under 35 U.S.C. § 102(b) should be withdrawn.

Claims 2-14 depend, directly or indirectly, from independent claim 1, and are therefore respectfully submitted to be allowable for at least the same reasons, as well as for reciting additional features that further distinguish over the applied prior art.

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CONCLUSION


In view of the foregoing amendments and remarks, Applicants respectfully request the reconsideration of this Application and the prompt allowance of claims 1-14.

Should the Examiner feel that there are any issues outstanding after consideration of this reply, the Examiner is invited to contact Applicants' undersigned representative to expedite prosecution of the application.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 08-1641. **This paragraph is intended to be a CONSTRUCTIVE PETITION FOR EXTENSION OF TIME in accordance with 37 C.F.R. § 1.136(a)(3).**

Respectfully submitted,

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